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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CP

DEPUTY

Howard Kaloogian, State Bar No. 118954  
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Attorneys for Plaintiffs

**ORIGINAL**

**UNITED STATES DISTRICT COURT**

**Southern District of California**

**'08 CV 0210 WQH RBB**

SAN DIEGO MINUTEMEN, An  
Unincorporated Association,

Plaintiff,

vs.

CALIFORNIA BUSINESS  
TRANSPORTATION AND HOUSING  
AGENCY'S DEPARTMENT OF  
TRANSPORTATION; DALE BONNER,  
Individually and in his Official Capacity as  
Agency Director, Business, Transportation  
and Housing Agency; WILL KEMPTON,  
Individually and in his Official Capacity as  
CalTrans Director; PEDRO ORSO-  
DELGADO, Individually and in his Official  
Capacity as Caltrans District Director and  
DOES 1 through 10,

Defendants.

Case Number: \_\_\_\_\_

COMPLAINT FOR  
DECLARATORY RELIEF; VIOLATION  
OF 42 USC 1983 AND VIOLATION OF  
42 USC 1988

(DEMAND FOR JURY TRIAL)

Plaintiff, SAN DIEGO MINUTEMEN allege:

**FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF**

**AS AGAINST ALL DEFENDANTS**

1. Plaintiff is and was at all times herein mentioned an unincorporated association operating in County of San Diego, State of California within the Southern District of California.
2. The jurisdiction of this court over the subject matter of this action is predicated upon

1 28 USC 1331, 42 USC 1983 and 42 USC 1988 regarding a violation of plaintiff's constitutional  
 2 rights, free speech and expression, due process and equal protection.

3 3. Plaintiff is unaware of the names and capacities of defendants named herein as DOES  
 4 1 through 10, and each of them, and therefore, sues said defendants in such fictitious names and  
 5 capacities. Plaintiff is informed and believes that each defendant named herein as DOE combined  
 6 and conspired among themselves and with the other defendants herein, to deprive plaintiff of its  
 7 constitutional rights. DOE defendants are alleged to have committed the same acts as the named  
 8 defendants.

9 4. The defendant CALIFORNIA BUSINESS TRANSPORTATION AND HOUSING  
 10 AGENCY'S DEPARTMENT OF TRANSPORTATION is a California department and/or agency  
 11 of the state of California which is in charge of highway transportation, maintenance and the  
 12 California Adopt-a-Highway program under its agency, CalTrans, and at all times herein mentioned  
 13 acted under the color of state law.

14 5. DALE BONNER is Agency Director of the CALIFORNIA BUSINESS  
 15 TRANSPORTATION AND HOUSING AGENCY'S DEPARTMENT OF TRANSPORTATION  
 16 and at all times herein mentioned acted under the color of state law.

17 6. Defendant WILL KEMPTOM is the Director of CalTrans; defendant PEDRO ORSO-  
 18 DELGADO is the District Director of CalTrans for the area which is the subject of plaintiff's within  
 19 complaint located on Interstate 5 near the United States Border Inspection Station at San Onofre,  
 20 California, and each at all times herein mentioned acted under the color of state law.

21 7. Plaintiff, SAN DIEGO MINUTEMEN, is an organization which promotes adherence  
 22 to both California and federal immigration laws in a peaceful, non-violent manner. The Mission  
 23 Statement of the SAN DIEGO MINUTEMEN is:

24 "To demand maximum border security and immigration enforcement  
 25 both locally and at the national level. We oppose illegal immigration  
 26 in all parts of San Diego County with our activism. We assist and  
 27 support the U.S. Border Patrol in securing the U.S.-Mexican border  
 28 from terrorists, gang members, criminals, drugs, and illegal aliens  
 entering the United States. We also assist ICE (Immigration &  
 Customs Enforcement) and local law enforcement in exposing law  
 breaking employers and helping to return illegal aliens to their  
 country of legal residence. We act on behalf of and in accord with the

1 United States Constitution and the Bill of Rights."

2 8. On or about September 18, 2007, plaintiff applied for an Adopt-a-Highway  
3 encroachment permit.

4 9. That on November 19, 2007, plaintiff's application for an Adopt-a-Highway sign was  
5 accepted. A copy of said letter of acceptance is attached hereto as Exhibit "1".

6 10. On or about November 21, 2007 an encroachment permit, allowing plaintiff to  
7 maintain the shoulders of Interstate 5 near San Onofre was issued. A copy of said permit is attached  
8 hereto as Exhibit "2". Said permit is site specific relating only to that area south of the United States  
9 Border Inspection Station on Interstate 5, San Onofre, California.

10 11. That thereafter, Adopt-a-Highway signs were erected on either side of the San Onofre,  
11 Immigration Check Point on the northbound side of Interstate 5. A photograph of one of the signs  
12 is attached hereto as Exhibit "3". Such sign bears the name "SAN DIEGO MINUTEMEN".

13 12. That thereafter, in January of 2008, numerous members of plaintiff's organization,  
14 dressed in CalTrns approved hard hats and safety vests proceeded to clean up their Adopt-a-Highway  
15 assigned area. While clearing up their area, there was no violence, no interaction with motorists,  
16 no signs, waiving or of placards. Plaintiff's members acted in a nondescript, appropriate manner  
17 under the direction of CalTrans in picking up litter in their assigned area. A photograph of plaintiff's  
18 members picking up litter in their assigned area and near their Adopt-a-Highway sign is attached  
19 hereto s Exhibit "4".

20 13. That on January 28, 2008, plaintiff's president, Jeff Schwilk, received a letter from  
21 PEDRO ORSO-DELGADO, CalTrans District Director, informing him that because plaintiff's  
22 participation "raised questions", CalTrans was terminating and revoking plaintiff's permit at the site  
23 specific location at the U.S. Border Inspection Station on Interstate 5, San Onofre, California. A  
24 copy of said letter is attached hereto as Exhibit "5". Plaintiff was neither allowed nor informed that  
25 it had a right to a hearing to offer evidence and/or dispute any of the allegations or "questions" raised  
26 in the letter of January 28, 2008, Exhibit "5".

27 14. That thereafter, an article was published in the San Diego Union Tribune by columnist  
28 Logan Jenkins, indicating that the decision to terminate plaintiff's site specific location for its Adopt-

1 a-Highway participation was terminated because of political pressure placed upon CalTrans by three  
2 members of the California Legislature. [Exhibit 6]

3 15. An actual controversy exists between plaintiff and defendants and each of them.  
4 Plaintiff contends:

5 1. That the termination of its Adopt-a-Highway sign and requisite privileges and  
6 obligations was terminated in violation of their First Amendment rights because of content and  
7 viewpoint discrimination by defendants herein and possibly others including members of the  
8 California Legislature.

9 2. Plaintiff contends that the actions of defendants and each of them in  
10 terminating plaintiff's site specific Adopt-a-Highway location was done arbitrarily, capriciously and  
11 based upon the unfettered discretion given to the defendants and each of them in violation of  
12 plaintiff's constitutional rights to free speech and equal protection under the laws.

13 3. Plaintiff contends that defendants and each of them did not follow their own  
14 policies and procedures in removing plaintiff's sign and plaintiff's rights to a site specific Adopt-a-  
15 Highway sign and that defendant CalTrans' procedures do not allow for a hearing or for plaintiff or  
16 any individual to present evidence which refutes or challenges a revocation of an Adopt-a-Highway  
17 permit.

18 4. Plaintiff contends that defendants dispute plaintiff's contentions set forth  
19 above.

20 16. Plaintiff requests a declaration of this court that the actions of defendants and each  
21 of them in removing plaintiff's Adopt-a-Highway sign from its site specific location along Interstate  
22 5 at San Onofre, California was a violation of plaintiff's First Amendment Rights of freedom and  
23 expression and a violation of plaintiff's rights under the Fourteenth Amendment to procedural due  
24 process and for equal protection under the law. Plaintiff further requests that in addition to the  
25 aforementioned declaration, that this court temporarily, preliminarily and permanently enjoin  
26 defendants and each of them from assigning the specific site location given to plaintiff under its  
27 Adopt-a-Highway program to any other individual or entity during the term which plaintiff is a  
28 member of the California Adopt-a-Highway program.

1           17. Plaintiff further requests a mandatory injunction requiring defendants and each of  
2 them to return and replace plaintiff's Adopt-a-Highway sign to its original location on Interstate 5,  
3 south of San Onofre, California, and to restore all of plaintiff's rights, duties and obligations as an  
4 Adopt-a-Highway member at said location.

5                   **SECOND CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S**  
6                   **CIVIL RIGHTS PURSUANT TO 42 USC §1983**

7           18. Plaintiff incorporates paragraphs 1 through 17 of the First Cause of Action as though  
8 fully set forth at length herein.

9           18. 42 USC §1983 provides in part: "every person who, under color of any statute,  
10 ordinance, regulation, custom or usage of any state or territory or the District of Columbia, subjects,  
11 or causes to be subjected, any citizen of the United States or other person within the jurisdiction  
12 thereof to the deprivation of any rights, privileges or immunities secured by the constitution and  
13 laws, shall be liable to the party injured in an action at law, in equity or other proper pleadings for  
14 redress . . . "

15           19. That the actions of defendants and each of them in depriving plaintiff of its rights to  
16 freedom of speech and expression, procedural due process and equal protection under the laws,  
17 violated plaintiff's rights.

18           20. That as a result of the actions of defendants and each of them, as set forth  
19 hereinabove, plaintiff has been injured in a sum not readily ascertainable, but is believed to be in  
20 excess of \$50,000. Plaintiff ask leave to amend its complaint when the true nature and extent of its  
21 damages have been ascertained. Additionally, plaintiff is statutorily entitled to recover its reasonable  
22 attorneys fees and costs incurred in this action.

23                   **THIRD CAUSE OF ACTION FOR VIOLATION OF 42USC §1988**  
24                   **AS AGAINST ALL DEFENDANTS**

25           21. Plaintiff incorporates paragraphs 1 through 20 of the First Cause of Action as though  
26 fully set forth at length herein.

27 //

28 //

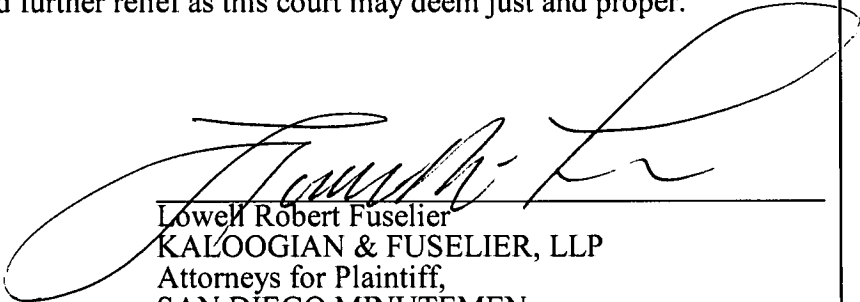
1           22. As a result of the defendants and each of them, plaintiff's rights under 42 USC §1988  
2 have been violated. Plaintiff is entitled to reasonable attorney fees as the result of the actions of  
3 defendants and each of them.

4           PRAYER:

5           Plaintiff prays for judgment against defendants and each of them as follows:

- 6           1. General damages according to proof;
- 7           2. Special damages according to proof;
- 8           3. Reasonable attorney fees;
- 9           4. For a declaration that defendants, and each of them, violated plaintiff's First  
10 Amendment rights and expression, procedural due process and equal protection under the laws by  
11 moving plaintiff's Adopt-a-Highway sign on Interstate 5 near San Onofre, California.
- 12           5. For the issuance of a temporary restraining order and preliminary injunction  
13 prohibiting defendants and each of them from assigning the Adopt-a-Highway area previously  
14 assigned to plaintiff on Interstate 5 south of San Onofre, California;
- 15           6. For a mandatory injunction ordering defendants and each of them to replace plaintiff's  
16 Adopt-a-Highway signs in their original locations south of San Onofre on Interstate 5 and to allow  
17 plaintiff to participate in the CalTrans Adopt-a-Highway with all rights, duties and obligations as any  
18 other member of the CalTrans Adopt-a-Highway program;
- 19           7. For costs of suit incurred herein;
- 20           8. For such other and further relief as this court may deem just and proper.

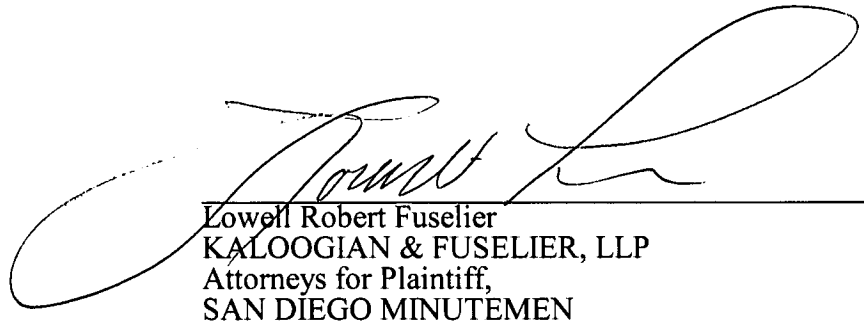
21 DATED: February 4, 2008

22  
23   
24 Lowell Robert Fuselier  
25 KALOOGIAN & FUSELIER, LLP  
26 Attorneys for Plaintiff,  
27 SAN DIEGO MINUTEMEN  
28

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

DATED: February 4, 2008



Lowell Robert Fuselier  
KALOOGIAN & FUSELIER, LLP  
Attorneys for Plaintiff,  
SAN DIEGO MINUTEMEN

STATE OF CALIFORNIA-BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

**DEPARTMENT OF TRANSPORTATION****DISTRICT 11 MAINTENANCE PROGRAM**

4050 TAYLOR STREET MS 220

SAN DIEGO, CA 92110

PHONE: (619) 688-3327

FAX: (619) 688-3314

*Flex your power!  
Be energy efficient!*

Monday, November 19, 2007

San Diego Minutemen  
Attn: Jeff Schwilk  
3809 Plaza Dr. 107-133  
Oceanside, CA 92056

Adoption Type: Litter Removal  
Work Frequency: 24 times per year  
Location: NB 5: SD 66.3 - SD 68.3  
Freeway Section

Dear Mr. Schwilk:

Welcome to the Caltrans Adopt-A-Highway Program! Your Adopt-A-Highway Encroachment Permit should arrive in the mail within the next few weeks. The permit is a legal and binding document that contains important safety information, so please review it thoroughly. Once you receive your permit, there will be three items to complete before you can begin to work.

First, you must call Caltrans to schedule a safety orientation. This should be done within two weeks of your permit's start date. The purpose of the orientation is to discuss safety procedures and to issue supplies, safety equipment, and safety-training materials.

Next, you must provide safety training and safety equipment to the participating members of your group.

Finally, you must contact your Caltrans field representative at least five days prior to your work event. Please keep in mind that you will be expected to begin work within 30 calendar days of your permit's start date, even if your signs have not yet been installed.

Dave Salerno, (760) 438-4979, will be providing your safety orientation and is also your Caltrans field representative.

I hope that you find participating in the Adopt-A-Highway Program a rewarding and enjoyable experience. However, if you feel that you cannot keep up with the commitment, you will be able to cancel your adoption without penalty. Please feel free to call me with any questions or concerns.

Sincerely,

Larry Wharton

District 11 Adopt-A-Highway Coordinator  
(619) 688-3327



ADOPT-A-HIGHWAY

*"Caltrans improves mobility across California"***Exhibit** 1

000001



STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

**ENCROACHMENT PERMIT (ADOPT-A-HIGHWAY)**

TR-0121 (REV. 01/2002)

In compliance with (Check one):

☒ Your application of September 18, 2007

Utility Notice No. \_\_\_\_\_ of \_\_\_\_\_

☐ Agreement No. \_\_\_\_\_ of \_\_\_\_\_☐ R/W Contract No. \_\_\_\_\_ of \_\_\_\_\_Permit No.  
11-07NAH0586Dist/Co/Rte/PM  
11-SD-005 / 66.3-68.3 N/BDate  
November 21, 2007Fee Paid  
\$ N/CDeposit  
\$Performance Bond Amount (1)  
\$Payment Bond Amount (2)  
\$

Bond Company

Bond Number (1)

Bond Number (2)

TO: SAN DIEGO MINUTEMEN  
3809 PLAZA DRIVE, 107-133  
OCEANSIDE, CA 92056

JEFF SCHWILK 760.525-1655

, PERMITTEE

and subject to the following, PERMISSION IS HEREBY GRANTED to:

Perform the following activities on 11-SD-005 PM 66.3-68.3 N/B Frequency: Twice per month

DISTRICT / COUNTY / ROUTE / POSTMILE RANGE / DIRECTION(S)

- ☒ Litter Removal. ☐ Seedling Tree and Shrub Planting.
- ☐ Graffiti Removal. ☐ Wildflower Planting and Vegetation Control.
- ☐ Vegetation Control. ☐ "Spot" Wildflower Planting.
- ☐ Recognition Panel Replacement. (By contractors only. Panels must be approved by the Department.)
- ☐ Other, describe: \_\_\_\_\_

NO ONE UNDER 16 YEARS OF AGE IS ALLOWED TO PARTICIPATE ON STATE RIGHT-OF-WAY.

THIS PERMIT IS NOT A PROPERTY RIGHT AND DOES NOT TRANSFER WITH THE PROPERTY TO A NEW OWNER.

The following attachments are also included as part of this permit (Check applicable):

- ☒ Adopt-A-Highway Permit Special Provisions. ☐ Planting Plan, Work Plan, and Work Schedule.
- ☐ Vegetation Control Plan, Work Plan, and Work Schedule. ☐ \_\_\_\_\_

**ADVANCED NOTIFICATION OF WORK:** Before each work occasion, the Permittee shall notify the Department's Maintenance Field Representative at least five working days, but no more than one month, prior to start of any work to ensure coordination with other activities. Dave Salerno 6050 Paseo Del Norte Carlsbad, Ca. 760.438-4979

DEPARTMENT'S MAINTENANCE FIELD REPRESENTATIVE

PHONE NUMBER

Permittee's work shall be subordinated to State operations and shall not interfere with State forces or State's contractors.

☐ Yes ☐ No The information in the environmental documentation has been reviewed and considered prior to approval of this permit.

This permit expires on November 30th, 20 12

This permit is to be strictly construed and no other work other than specifically mentioned is hereby authorized.

No project work shall be commenced until all other necessary permits and environmental clearances have been obtained.

Larry Wharton, Distr Adopt A Hwy Coordinator, (619) 688-3327  
Permits  
Permittee  
Merl Nusz, Region Manager  
Dave Salerno, Inspector

APPROVED:

BY:

PEPRO ORSO-DELGADO, District Director

District Permit Engineer

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION

**ATTACHMENT A (ADOPT-A-HIGHWAY SPECIAL PROVISIONS)**

MTCE-09 (REV 3/2006)

**1. DEPARTMENTAL CONTACTS:**

**District Adopt-A-Highway Coordinator** (Processes applications, answers questions regarding program policy, maintains program data, receives contact information changes.)

Name: Larry Wharton or current District 11 Adopt-A-Highway Coordinator Phone: (619) 688-3327

Address: Caltrans Maintenance Program, 4050 Taylor Street MS 220, San Diego, CA 92110

**Representative Providing Safety Orientation** (Answers safety-related questions, provides initial supply of safety equipment.)

Name: Dave Salerno or current CT Maintenance Supervisor Phone: (760) 438-4979

Address: Carlsbad Maintenance Station, 6050 Paseo Del Norte, Carlsbad, CA 92008

**Maintenance Field Representative** (Receives five-day advance notice of work, provides additional supplies and equipment throughout the permit period, arranges for collection of filled litter bags, hazardous materials, and large items.)

Name: Dave Salerno or current CT Maintenance Supervisor Phone: (760) 438-4979

Address: Carlsbad Maintenance Station, 6050 Paseo Del Norte, Carlsbad, CA 92008

**2. WORK FREQUENCY (Check all that apply):**

☒ Litter shall be removed a minimum of 24 times per year.

☐ Graffiti shall be removed within \_\_\_\_ calendar days of notification.

☐ Vegetation shall be controlled a minimum of \_\_\_\_ times per year.

☐ Planting, vegetation control, and other activities shall be performed per permittee's attached plans and schedules.

**3. PARTICIPATION OF MINORS**

☐ Minors, aged 16 and 17, are authorized to work at this location.

☒ Persons under the age of 18 are **not** authorized to work at this location.

**4. WORK DAYS AND HOURS**

Work shall **not** be performed during the holiday periods listed in item 9 of the Special Provisions. In addition, work shall **not** be performed:

No additional restrictions.

Weather permitting, litter removal groups shall schedule work during the national cleanup events listed in item 10 of the Special Provisions. In addition, work shall **be** performed:

No additional scheduling restrictions.

**5. SITE ACCESS – Direction 1: NB 5 SD 66.3 - SD 68.3**

Walk-on entry and exit points? ☒ Yes ☐ No

Shoulders for drop-off and pick-up? ☒ Yes ☐ No

Space to park off of shoulders? ☒ Yes ☐ No

Comments/Recommendations:

None.

**SITE ACCESS – Direction 2:**

Walk-on entry and exit points? ☐ Yes ☐ No

Shoulders for drop-off and pick-up? ☐ Yes ☐ No

Space to park off of shoulders? ☐ Yes ☐ No

Comments/Recommendations:

**6. WORK PROCEDURES – Direction 1: WORK PROCEDURES – Direction 2:**

Begin: At Adopt-a-Highway sign located at postmile 66.2

Begin:

End: At next Adopt-a-Highway sign.

End:

In addition to the restrictions listed in item 14 of the Special Provisions, work may **not** be performed in the following portions.

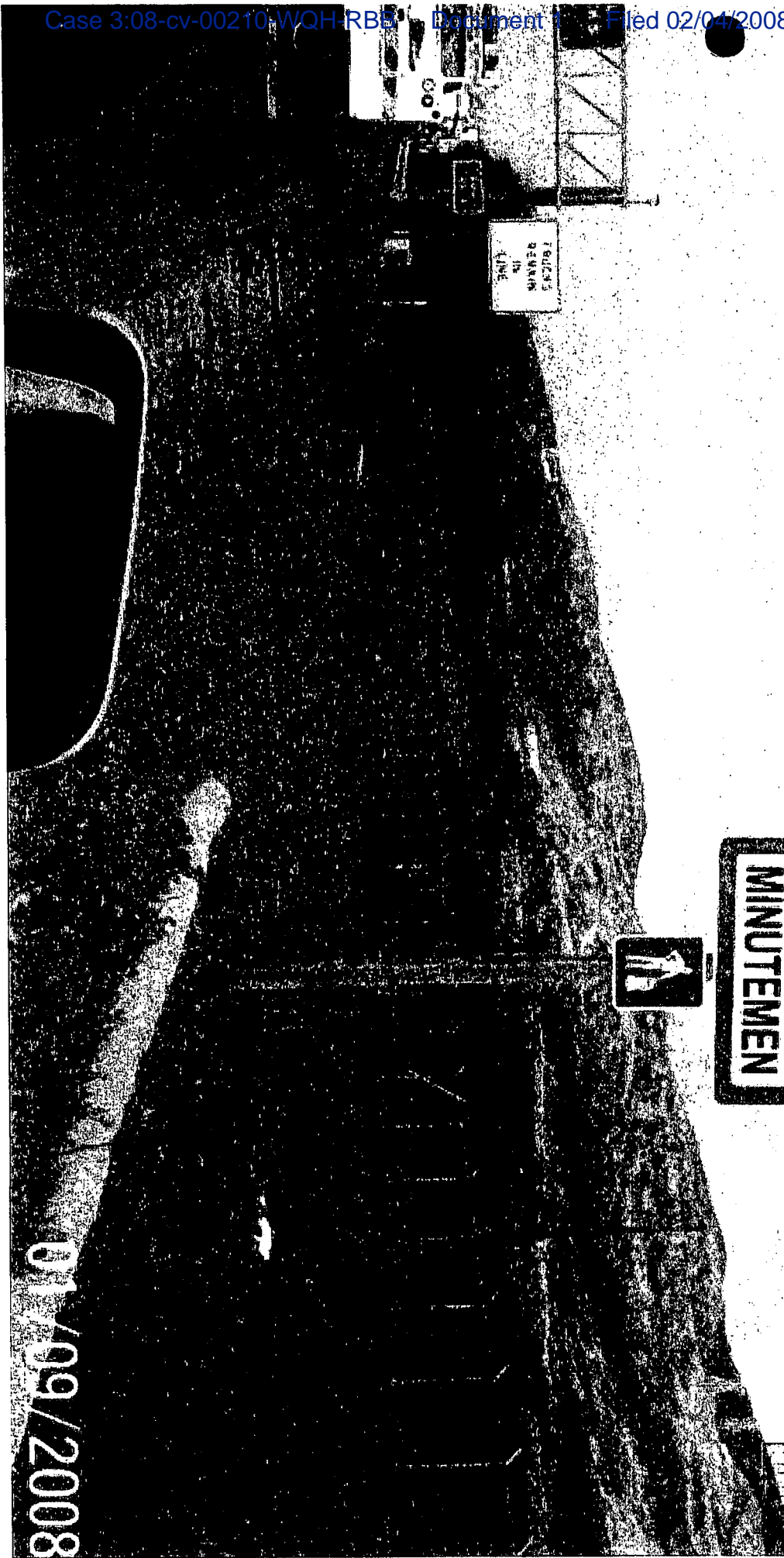
Direction 1:

Direction 2:

DATE PREPARED 11/19/2007	ADOPT-A-HIGHWAY COORDINATOR SIGNATURE 	GROUP NAME/CONTRACTOR NAME San Diego Minutemen, 1107 NAH 0586
ADOPTION TYPE Litter Removal	ADOPTION SITE LOCATION TYPE Freeway Section	

ADA NOTICE: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

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01/09/2008

Exhibit 3

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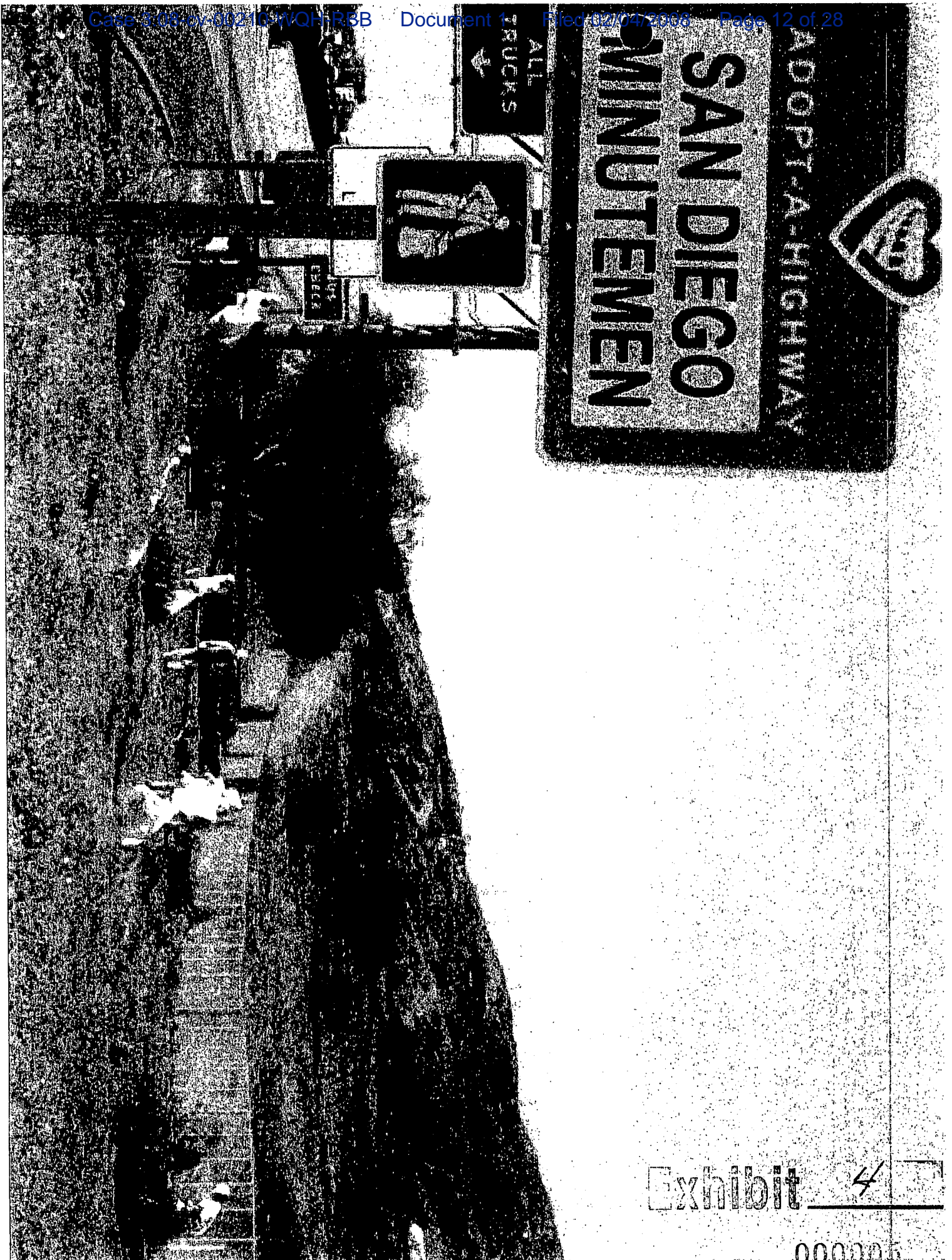


Exhibit 4

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**DEPARTMENT OF TRANSPORTATION**

4050 TAYLOR STREET  
SAN DIEGO, CA 92110  
PHONE (619) 688-6668  
FAX (619) 688-3122  
TTY 711



*Flex your power!  
Be energy efficient!*

January 28, 2008

Mr. Jeff Schwilk  
San Diego Minutemen  
3809 Plaza Drive, 107-133  
Oceanside, CA 92056

Dear Mr. Schwilk:

As the owner and operator of the State Highway System, the California Department of Transportation (Department) is responsible for the safety of its property and the facilitation of movement on that system. The location of your existing Adopt-a-Highway (AAH) permit has raised questions regarding public safety due to the proximity of your assigned highway segment to a U.S. Border Patrol facility that is co-located with the California Highway Patrol (CHP) San Onofre Inspection facility. Your group has also indicated concerns regarding possible vandalism to the courtesy sign displaying your participation in the AAH Program and the release of information relative to the days you will perform the required clean up.

Based on these issues, and in consultation with the CHP, the Department has concluded that your organization's participation in the AAH Program at the current location, as set forth in Permit No. 11-07NAH0586, poses a significant risk of disruption to the operation of the State highway, as well as public safety concerns for both the traveling public and participants in the AAH Program. As a result, Permit No. 11-07NAH0586 is hereby modified and the related courtesy sign will be moved. The Department has identified another more suitable location along State Route 52 near Santee for assignment to your organization under this program.

Please be advised that the Department is currently examining allegations of violent behavior and/or advocacy of violence by your group. Under the AAH Program eligibility criteria, entities that advocate violence, violation of the law, or discrimination based upon race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, sex, or sexual orientation may not participate in the Program. These allegations warrant careful examination, and the Department will conduct this review in an expeditious fashion.

*"Caltrans improves mobility across California"*

**Exhibit**

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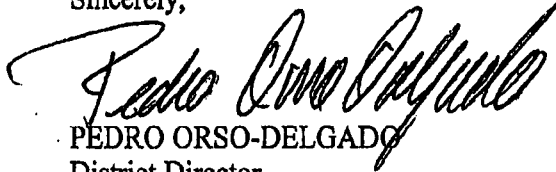
Jeff Schwilk

January 28, 2008

Page 2

The Department does appreciate the support of private groups to help keep our highways clean. However, safety is our paramount concern. If you have any questions regarding this letter, please contact me.

Sincerely,



PEDRO ORSO-DELGADO  
District Director

- c: Will Kempton, Director of Transportation
- Mike Brown, Commissioner, California Highway Patrol
- Skip Carter, Chief, Border Division, California Highway Patrol

Exhibit            /

STATE OF CALIFORNIA-BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

**DEPARTMENT OF TRANSPORTATION****DISTRICT 11 MAINTENANCE PROGRAM**

4050 TAYLOR STREET MS 220

SAN DIEGO, CA 92110

PHONE: (619) 688-3327

FAX: (619) 688-3314



*Flex your power!  
Be energy efficient!*

Monday, November 19, 2007

San Diego Minutemen  
Attn: Jeff Schwilk  
3809 Plaza Dr. 107-133  
Oceanside, CA 92056

Adoption Type: Litter Removal  
Work Frequency: 24 times per year  
Location: NB 5: SD 66.3 - SD 68.3  
Freeway Section

Dear Mr. Schwilk:

Welcome to the Caltrans Adopt-A-Highway Program! Your Adopt-A-Highway Encroachment Permit should arrive in the mail within the next few weeks. The permit is a legal and binding document that contains important safety information, so please review it thoroughly. Once you receive your permit, there will be three items to complete before you can begin to work.

First, you must call Caltrans to schedule a safety orientation. This should be done within two weeks of your permit's start date. The purpose of the orientation is to discuss safety procedures and to issue supplies, safety equipment, and safety-training materials.

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Finally, you must contact your Caltrans field representative at least five days prior to your work event. Please keep in mind that you will be expected to begin work within 30 calendar days of your permit's start date, even if your signs have not yet been installed.

Dave Salerno, (760) 438-4979, will be providing your safety orientation and is also your Caltrans field representative.

I hope that you find participating in the Adopt-A-Highway Program a rewarding and enjoyable experience. However, if you feel that you cannot keep up with the commitment, you will be able to cancel your adoption without penalty. Please feel free to call me with any questions or concerns.

Sincerely,

Larry Wharton  
District 11 Adopt-A-Highway Coordinator  
(619) 688-3327



ADOPT-A-HIGHWAY

*"Caltrans improves mobility across California"***Exhibit** 1

0000001



Exhibit 2

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

**ENCROACHMENT PERMIT (ADOPT-A-HIGHWAY)**

TR-0121 (REV. 01/2002)

In compliance with (Check one):

☒ Your application of September 18, 2007

Utility Notice No. \_\_\_\_\_ of \_\_\_\_\_

☐ Agreement No. \_\_\_\_\_ of \_\_\_\_\_☐ R/W Contract No. \_\_\_\_\_ of \_\_\_\_\_

Permit No.

11-07NAH0586

Dist/Co/Rte/PM

11-SD-005 / 66.3-68.3 N/B

Date

November 21, 2007

Fee Paid

\$ N/C

Deposit

\$

Performance Bond Amount (1)

\$

Payment Bond Amount (2)

\$

Bond Company

Bond Number (1)

Bond Number (2)

TO: SAN DIEGO MINUTEMEN  
3809 PLAZA DRIVE, 107-133  
OCEANSIDE, CA 92056

JEFF SCHWILK 760.525-1655

, PERMITTEE

and subject to the following, PERMISSION IS HEREBY GRANTED to:

Perform the following activities on 11-SD-005 PM 66.3-68.3 N/B Frequency: Twice per month

DISTRICT / COUNTY / ROUTE / POSTMILE RANGE / DIRECTION(S)

- ☒ Litter Removal. ☐ Seedling Tree and Shrub Planting.  
☐ Graffiti Removal. ☐ Wildflower Planting and Vegetation Control.  
☐ Vegetation Control. ☐ "Spot" Wildflower Planting.  
☐ Recognition Panel Replacement. (By contractors only. Panels must be approved by the Department.)  
☐ Other, describe: \_\_\_\_\_

NO ONE UNDER 16 YEARS OF AGE IS ALLOWED TO PARTICIPATE ON STATE RIGHT-OF-WAY.

THIS PERMIT IS NOT A PROPERTY RIGHT AND DOES NOT TRANSFER WITH THE PROPERTY TO A NEW OWNER.

The following attachments are also included as part of this permit (Check applicable):

- ☒ Adopt-A-Highway Permit Special Provisions. ☐ Planting Plan, Work Plan, and Work Schedule.  
☐ Vegetation Control Plan, Work Plan, and Work Schedule. ☐ \_\_\_\_\_

**ADVANCED NOTIFICATION OF WORK:** Before each work occasion, the Permittee shall notify the Department's Maintenance Field Representative at least five working days, but no more than one month, prior to start of any work to ensure coordination with other activities. Dave Salerno 6050 Paseo Del Norte Carlsbad, Ca. 760.438-4979

DEPARTMENT'S MAINTENANCE FIELD REPRESENTATIVE

PHONE NUMBER

Permittee's work shall be subordinated to State operations and shall not interfere with State forces or State's contractors.

☐ Yes ☐ No The information in the environmental documentation has been reviewed and considered prior to approval of this permit.

This permit expires on November 30th, 20 12

This permit is to be strictly construed and no other work other than specifically mentioned is hereby authorized.

No project work shall be commenced until all other necessary permits and environmental clearances have been obtained.

Larry Wharton, Distr Adopt A Hwy Coordinator, (619) 688-3327  
Permits  
Permittee  
Merl Nusz, Region Manager  
Dave Salerno, Inspector

APPROVED:

BY:

PEDRO ORSO-DELGADO, District Director

JIM MARKOV, District Permit Engineer

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

**ATTACHMENT A (ADOPT-A-HIGHWAY SPECIAL PROVISIONS)**

MTCE-09 (REV 3/2006)

**1. DEPARTMENTAL CONTACTS:**

**District Adopt-A-Highway Coordinator** (Processes applications, answers questions regarding program policy, maintains program data, receives contact information changes.)

Name: Larry Wharton or current District 11 Adopt-A-Highway Coordinator Phone: (619) 688-3327

Address: Caltrans Maintenance Program, 4050 Taylor Street MS 220, San Diego, CA 92110

**Representative Providing Safety Orientation** (Answers safety-related questions, provides initial supply of safety equipment.)

Name: Dave Salerno or current CT Maintenance Supervisor Phone: (760) 438-4979

Address: Carlsbad Maintenance Station, 6050 Paseo Del Norte, Carlsbad, CA 92008

**Maintenance Field Representative** (Receives five-day advance notice of work, provides additional supplies and equipment throughout the permit period, arranges for collection of filled litter bags, hazardous materials, and large items.)

Name: Dave Salerno or current CT Maintenance Supervisor Phone: (760) 438-4979

Address: Carlsbad Maintenance Station, 6050 Paseo Del Norte, Carlsbad, CA 92008

**2. WORK FREQUENCY** (Check all that apply):

☒ Litter shall be removed a minimum of 24 times per year.

☐ Graffiti shall be removed within \_\_\_\_ calendar days of notification.

☐ Vegetation shall be controlled a minimum of \_\_\_\_ times per year.

☐ Planting, vegetation control, and other activities shall be performed per permittee's attached plans and schedules.

**3. PARTICIPATION OF MINORS**

☐ Minors, aged 16 and 17, are authorized to work at this location.

☒ Persons under the age of 18 are **not** authorized to work at this location.

**4. WORK DAYS AND HOURS**

Work shall **not** be performed during the holiday periods listed in item 9 of the Special Provisions. In addition, work shall **not** be performed:

No additional restrictions.

Weather permitting, litter removal groups shall schedule work during the national cleanup events listed in item 10 of the Special Provisions. In addition, work shall be performed:

No additional scheduling restrictions.

**5. SITE ACCESS – Direction 1: NB 5 SD 66.3 - SD 68.3**

Walk-on entry and exit points? ☒ Yes ☐ No

Shoulders for drop-off and pick-up? ☒ Yes ☐ No

Space to park off of shoulders? ☒ Yes ☐ No

Comments/Recommendations:

None.

**SITE ACCESS – Direction 2:**

Walk-on entry and exit points? ☐ Yes ☐ No

Shoulders for drop-off and pick-up? ☐ Yes ☐ No

Space to park off of shoulders? ☐ Yes ☐ No

Comments/Recommendations:

**6. WORK PROCEDURES – Direction 1: WORK PROCEDURES – Direction 2:**

Begin: At Adopt-a-Highway sign located at postmile 66.2

Begin:

End: At next Adopt-a-Highway sign.

End:

In addition to the restrictions listed in item 14 of the Special Provisions, work may **not** be performed in the following portions.

Direction 1:

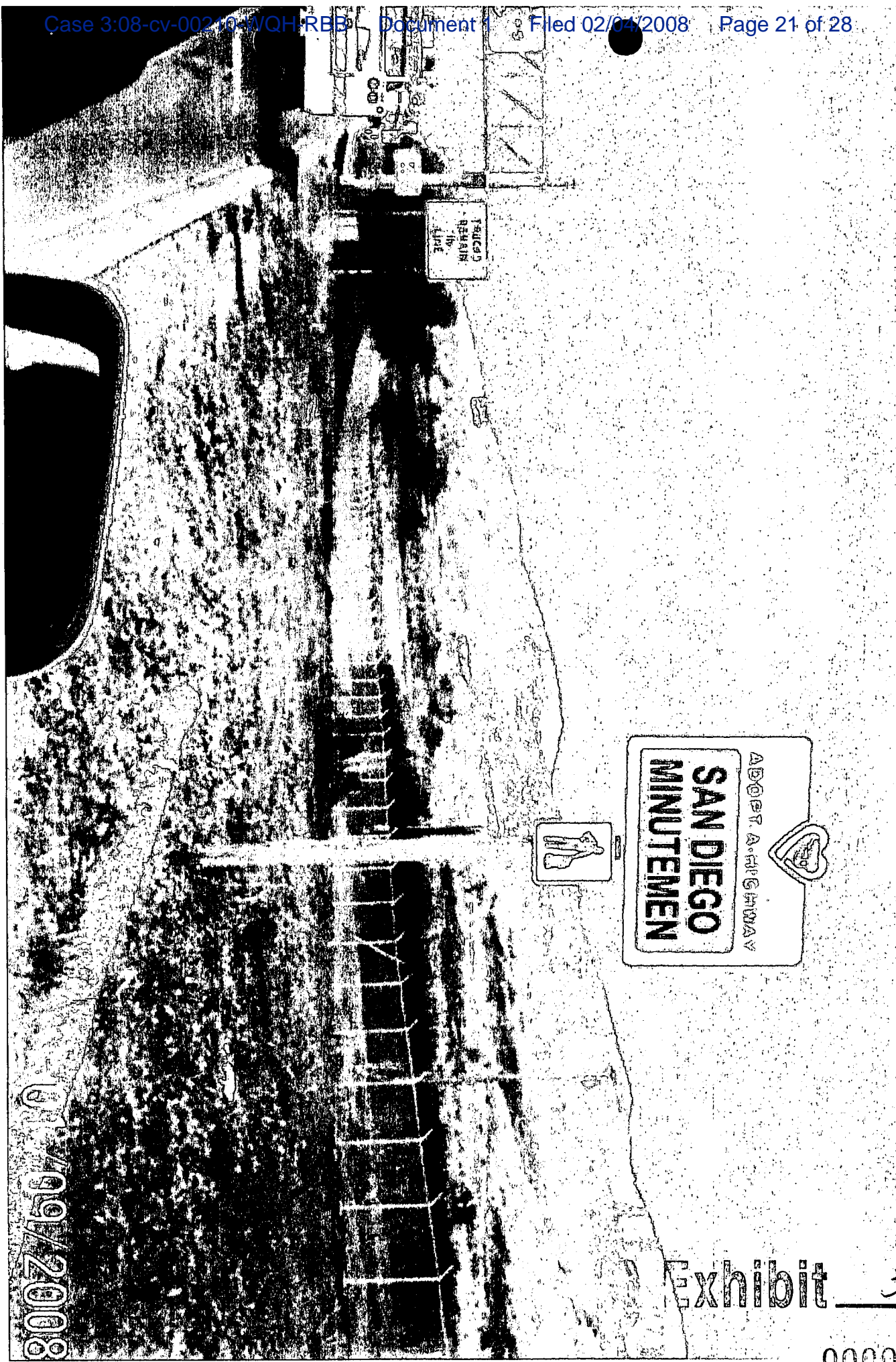
Direction 2:

DATE PREPARED 11/19/2007	ADOPT-A-HIGHWAY COORDINATOR SIGNATURE 	GROUP NAME/CONTRACTOR NAME San Diego Minutemen, 1107 NAH 0586
ADOPTION TYPE Litter Removal		ADOPTION SITE LOCATION TYPE Freeway Section

ADA NOTICE: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

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Exhibit 3



02/09/2008

Exhibit 3

000004

Exhibit 4





Exhibit

4

000005

Exhibit 5



**DEPARTMENT OF TRANSPORTATION**

4050 TAYLOR STREET  
SAN DIEGO, CA 92110  
PHONE (619) 688-6668  
FAX (619) 688-3122  
TTY 711



*Flex your power!  
Be energy efficient!*

January 28, 2008

Mr. Jeff Schwilk  
San Diego Minutemen  
3809 Plaza Drive, 107-133  
Oceanside, CA 92056

Dear Mr. Schwilk:

As the owner and operator of the State Highway System, the California Department of Transportation (Department) is responsible for the safety of its property and the facilitation of movement on that system. The location of your existing Adopt-a-Highway (AAH) permit has raised questions regarding public safety due to the proximity of your assigned highway segment to a U.S. Border Patrol facility that is co-located with the California Highway Patrol (CHP) San Onofre Inspection facility. Your group has also indicated concerns regarding possible vandalism to the courtesy sign displaying your participation in the AAH Program and the release of information relative to the days you will perform the required clean up.

Based on these issues, and in consultation with the CHP, the Department has concluded that your organization's participation in the AAH Program at the current location, as set forth in Permit No. 11-07NAH0586, poses a significant risk of disruption to the operation of the State highway, as well as public safety concerns for both the traveling public and participants in the AAH Program. As a result, Permit No. 11-07NAH0586 is hereby modified and the related courtesy sign will be moved. The Department has identified another more suitable location along State Route 52 near Santee for assignment to your organization under this program.

Please be advised that the Department is currently examining allegations of violent behavior and/or advocacy of violence by your group. Under the AAH Program eligibility criteria, entities that advocate violence, violation of the law, or discrimination based upon race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, sex, or sexual orientation may not participate in the Program. These allegations warrant careful examination, and the Department will conduct this review in an expeditious fashion.

*"Caltrans improves mobility across California"*

**Exhibit**

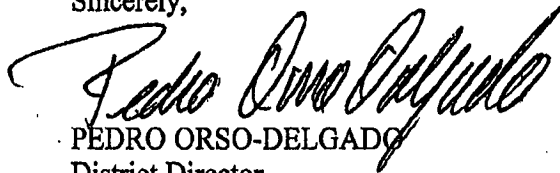
5

000003

Jeff Schwilk  
January 28, 2008  
Page 2

The Department does appreciate the support of private groups to help keep our highways clean. However, safety is our paramount concern. If you have any questions regarding this letter, please contact me.

Sincerely,



PEDRO ORSO-DELGADO  
District Director

- c: Will Kempton, Director of Transportation  
Mike Brown, Commissioner, California Highway Patrol  
Skip Carter, Chief, Border Division, California Highway Patrol

**UNITED STATES  
DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION**

**# 147194 - SR  
\* \* C O P Y \* \*  
February 04, 2008  
13:50:47**

**Civ Fil Non-Pris**

USAO #: 08CV0210 CIV. FIL.

Judge: WILLIAM Q HAYES

Amount: \$350.00 CK

Check#: BC#1325

**Total-> \$350.00**

**FROM: SAN DIEGO MINUTEMEN V.  
CALIFORNIA BUSINESS TRANS., ET  
CIVIL FILING**

JS 44 (Rev. 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

SAN DIEGO MINUTEMEN, An  
Unincorporated Association

(b) County of Residence of First Listed Plaintiff San Diego County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Lowel Robert Fuselier, Esq. Kaloogian & Fuselier, LLP  
2382 Faraday Ave., Suite 130, Carlsbad, CA 92008 (760) 431-7771

**DEFENDANTS**

CALIFORNIA BUSINESS TRANSPORTATION AND HOUSING  
AGENCY'S DEPARTMENT OF TRANSPORTATION ET AL.

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

Unknown

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |   |   |   |
|---|---|---|---|
| Citizen of This State                   | PTF <input checked="" type="checkbox"/> 1 DEF <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 <input type="checkbox"/> 2                               | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5         |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3                               | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6         |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
First and Fourteenth Amendments to U.S. Constitution; 42 U.S.C. Sec. 1983; 1988

Brief description of cause:

Violation of Free Speech, Procedural Due Process and Equal Protection

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

> \$50,000

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/04/2008

FOR OFFICE USE ONLY

RECEIPT #

147194  
2/4/08

AMOUNT

350.00

APPLYING IFP

JUDGE

MAG. JUDGE